

### Remarks

Applicants respectfully request reconsideration and allowance of the captioned application. Claims 1 and 13 are amended, claims 2, 6 and 21 are canceled without prejudice, and new claims 22-24 are added.

1. The Office Action objected to an informality in claim 13. Claim 13 is amended as indicated in the Office Action.

2. The Office Action rejected claim 1 as indefinite because of the claim term “about.” The applicable part of claim 1 has been deleted in a non-narrowing amendment.

3. The Office Action rejected claims 1, 2, 7, 12-15 and 20 as being indefinite. Without citing any authority, the Office Action asserted, “it is improper to claim the invention based on its relationship to an unclaimed element.” For example, claim 13 requires a claimed first upright to be structured and dimensioned to enable mounting it in a certain relationship with respect to an unclaimed rack. Applicants respectfully traverse the rejection. For example, MPEP §2173.05(g) stated “[t]here is nothing inherently wrong” with such claim limitations. That section of the MPEP concluded, “[i]n a claim that was directed to a kit of component parts capable of being assembled, the Court held that limitations such as ‘members adapted to be positioned’ ...serve to precisely define present structural attributes of interrelated component parts of the claimed assembly.” The MPEP cited *In re Venezia*, 189 USPQ 149 (CCPA 1976). In fact, the court held that such limitations also served to define attributes of claimed components interrelated with unclaimed components of an unclaimed assembly.

The representative claim in *Venezia* was for “a splice connector kit having component parts capable of being assembled in the field at the terminus of high voltage shielded

electrical cables... each having a conductor surrounded by an insulating jacket....” The cables, their conductors, and their insulating jackets were not part of the claimed kit. The claimed kit comprised “a pair of sleeves... each... adapted to be fitted over the insulating jacket,” and “electrical contact means adapted to be affixed to the terminus of each exposed conductor,” and “a housing... whereby said housing may be slideably positioned over one of said cables....” *Id.* at 150. The court said,

We see nothing wrong in defining the structures of the components of the completed connector assembly in terms of the interrelationship of the components, or the attributes they must possess, in the completed assembly. More particularly, we find nothing indefinite in these claims. One skilled in the art would have no difficulty determining whether or not a particular collection of components infringed the collection of interrelated components defined by these claims....

We also fail to see any basis for rejecting appellant’s claims for being incomplete in failing to recite a completed assembly. Appellant’s invention is a “kit” of parts which may or may not be made into a completed assembly.

*Id.* at 152. Similarly, the claims in issue are not indefinite even though attributes of the claimed components are described in relationship to an unclaimed rack. Applicants respectfully request that the rejection be withdrawn.

4. The Office Action rejected claims 1-5, 7, 12, 13 and 15-21 as being anticipated by Denny. The Office Action rejected claims 6, 9 and 14 as being rendered obvious by Denny in view of Calleja. The Office Action rejected claims 10 and 11 as being rendered obvious by Denny ('621) in view of Kita.

With respect to dependent claim 6, the Office Action erroneously asserted that Denny discloses the claimed upper mounts comprising U-shaped elements having legs and a central connecting region. The claimed mounts are structured and dimensioned for connecting a claimed upright to a rack post. The only Denny component that is arguably analogous to the

claimed mount is Denny bracket 140 (as seen in Denny Figures 1 and 7) or Denny bracket 494 (as seen in Denny Figures 5 and 6). However, as shown in the Figures, the Denny brackets are not U-shaped as claimed. Calleja also does not disclose U-shaped mounts, and the combination does not suggest the claimed mounts. As amended, the claim 6 limitations are incorporated into independent claim 1, and dependent claim 6 is canceled without prejudice. In view of the above discussion, amended independent claim 1 should be allowable.

With respect to dependent claim 21, the Office Action asserted that Denny's vertical support posts 120 have openings 124 along their entire lengths. However, the Office Action characterized the Denny net supports 740 as the claimed uprights to which the claimed net is mounted (and presumably also because Denny net supports are mountable to posts such as Denny posts 120). Consequently, Denny openings 124 are irrelevant, and it was probably the openings along the front of a Denny net support 740 that were contemplated. Either way, the front with the openings (openings 124 along post 120 or the openings along the front of support 740) is not open without interruption for most of the length of that component. Therefore, that claim limitation is not disclosed by Denny.

Furthermore, the openings along the front of Denny support 740 are not structured and dimensioned to enable Denny support 740 to be mounted to a rack post with a structural member (connected to the rack post) passing through the front of Denny support 740 (as claimed in independent claim 13). Those openings in the front of Denny support 740 are used to support Denny anchor member 440 (in Denny Figure 4) or 747 (in Denny Figure 7), and there is no room (if *arguendo* there otherwise would have been sufficient room) for a structural member to pass. Therefore, that claim limitation is not disclosed by Denny.

As amended, the claim 21 limitations are incorporated into independent claim 13, and claim 21 is canceled without prejudice. In view of the above discussion, independent claim 13 should be allowable.

Claims 3-5, 7 and 9-12 depend directly or indirectly from claim 1, and claims 14-20 depend directly from claim 13, and they should be allowable at least for that reason alone. However, there are additional reasons. For example, the Office Action erroneously asserted that Kita (in conjunction with Denny) rendered claims 10 and 11 obvious. The Office Action asserted that the Kita screen is solving a problem of removably covering the front face of a rack. In fact, that is not the problem being solved by either Kita or the captioned application. The captioned application concerns a safety net that will stop items from inadvertently falling from a storage rack. However, the Kita screen is not a safety net but a screen for projecting or displaying images. (Kita para. 2). Furthermore, the Kita screen is not wrapped around an upper element to maintain it in tension when it is being used, but to store it when it is not being used for its purpose of displaying images. (*see e.g.* Kita abstract and para. 8). Therefore, Kita does not disclose the claimed limitations, and there also is no motivation to combine Kita with Denny because they are not addressing similar problems.

For the foregoing reasons, applicants respectfully submit that claims 1, 3-5, 7 and 9-20 are allowable.


6. New independent claim 22 is a method claim similar to apparatus claim 13. New dependent claim 23 is a method claim similar to apparatus claim 2 which is cancelled without prejudice. New dependent claim 24 is a method claim similar to apparatus claim 17. The new claims are allowable for the same reasons discussed above for the other claims.

Applicants submit that the application is in condition for allowance, and request reconsideration and allowance. Should the Examiner be of the opinion that a telephone conference would expedite prosecution of the application, the applicants request the Examiner to call the undersigned at the below-listed telephone number.

Respectfully submitted,

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